IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 34 OF 2003

1. Mrs. Nazmeen Liyakat Khan,

2. Mr. Liyakat Khan,
major of age,
r/o H.No. 148,
behind Police Station,
Honda, Sattari, Goa. ... Petitioners.

Versus

1. Sadashiv Shankar Warde
Walaulikar, s/o late
Shankar Wade Walaulikar,
major in age, businessman,
and his wife,

2. Vibha Sadashiv Warde
Walaulikar, major of age,
service, both r/o E-21,
Sheroigova Marg,
Bicholim, Goa,

3. M/s. Walaulikar & Associates,
a partnership firm duly
registered under No.2/90 B.C.
in the Register of Firms
of Bardez,
under Indian Partnership Act,
1932, through the partner,
Shri Manik Shrinavassa Thali,
of major age, having his office
at c/o Thally Constructions,
Gharse Towers, 2nd Floor,
Opp. Don Bosco School,
Panaji, Goa,

4. Smt. Prabha Vishnu Warde
Walaulikar, w/o Vishnu Warde
Walaulikar, r/o Bicholim,
Goa,

5. Aruna Manik Thali, w/o
Shrinivas Thali, both
represetned by their attorney
Manik Shrinivas Thaly, by
power of attorney dated
31.12.90,

6. Shaikh Ismail Yacub Muzawor,
major of age, r/o c/o
Diamond Glass Centre,
Tukaram, Bldg., Opp.

Bappalal House, Rua de
Saudade, Pajifond,
Margao, Salcete, Goa, and

7. Smt. Fatima Bi, major
of age, r/o H.No. not known,
Behind Nani shop,
Vishant Cinema Rd., Malbha,
Margao, Salcete, Goa. ... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for the petitioners.

Shri S. Vahidullah, advocate for respondent nos.1 to 5, 6 & 7.

CORAM : F. I. REBELLO, J.

DATE : 26th June 2003.

ORAL ORDER

The petitioners are the plaintiffs who had filed a suit on the basis that they are co-owners of the property. The original defendants no.1 and 2 have purchased a plot developed by defendant no.3 and which defendant nos. 6 and 7 claimed to be their property. It was the case of the plaintiffs, that they are co-owners of the property and, consequently, respondent nos. 1 and 2 herein ought to be restrained by way of injunction from putting up any construction. The trial Court rejected the application for temporary injunction. An appeal was preferred. That appeal has been dismissed, against which the present petition has been filed.

On behalf of the petitioners, it is contended by the learned counsel that once the courts below had recorded a finding that the petitioners herein prima facie were co-owners, then respondent nos. 1 and 2 ought to have been

restrained from putting up construction. On behalf of respondent nos. 1 and 2, learned counsel has filed an affidavit pointing out that the construction is completed and occupancy certificate was issued to them on 14th February, 2003. Considering that there was no interim relief granted by this Court and the construction is completed, it will not be possible for this Court on the facts and circumstances of the case to interfere with the orders of the Courts below at this stage.

2. Learned counsel then contends that the Court should direct that the construction would be subject to the final order in the suit. No such orders were passed by the Courts below. It would, therefore, be not proper for this Court to pass any order.

It is for the courts below whilst disposing of the suit, to pass appropriate orders in law, which they think should be passed.

With the above directions, the Writ Petition is disposed of with no order as to costs.

F. I. REBELLO, J.

mc.